

VERNIE LYSENGEN

IBLA 83-782

Decided December 12, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease application M 56734.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

APPEARANCES: Wes Argue, Esq., Hampton, North Dakota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Appellant, Vernie Lysengen (Lysengen), appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 4, 1983. In its decision BLM gave Lysengen notice of rejection of Lysengen's simultaneous oil and gas lease application M 56734, which had received first priority for parcel MT 245 in the September 1982 drawing. BLM rejected Lysengen's application because Lysengen had failed to submit the executed lease agreement and first year's rental within 30 days from the date of receipt of notice, as required by 43 CFR 3112.4-1(a). 1/ That regulation provides, in pertinent part, that "[t]he executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." 43 CFR 3112.6-1(d) 2/ provides that the application of the first-qualified applicant shall be rejected if an offer is not filed in accordance with 43 CFR 3112.4-1.

1/ Effective Aug. 22, 1983, this regulation was renumbered as 43 CFR 3112.6-1(a) without substantive change. See 48 FR 33648, 33680 (July 22, 1983).

2/ Effective Aug. 22, 1983, this regulation was renumbered as 43 CFR 3112.5-1(c) without substantive change. See 48 FR 33648, 33679 (July 22, 1983).

On March 7, 1983, appellant received notice that he was the first priority applicant and BLM's request that he execute the lease agreement and tender the first year's rental. The return receipt affixed to the envelope containing the notice and lease forms was signed by appellant and returned to BLM on that date. However, the signed lease forms and first year's lease rental were not received by BLM until May 5, 1983, 59 days after the date of receipt of the notice and forms.

On appeal Lysengen explains that the reason for his delay was a medical one. Lysengen was undergoing treatment for leukemia at the time and was admitted to the hospital on March 13, 1983, and not discharged until March 18, 1983. Appellant admits that the documents and rental payment were not submitted (mailed by him) until May 3, 1983, but submitted a statement by his physician that "he would have been very fortunate to deal with any legal problems prior to May 3, 1983."

[1] Under the provisions of 43 CFR 3112.4-1(a) the executed lease agreement and the first year's rental payment must be filed with the proper BLM office within 30 days from the date of receipt of notice. BLM may not accept the forms and rental payment after the 30-day period because the rights of the second and third-qualified applicants have intervened. Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983); Hampton P. Stewart, 72 IBLA 358 (1983); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), *aff'd*, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). While it is unfortunate that appellant may have been precluded by illness from timely returning the lease forms and rental payments, strict compliance with the above regulations is mandatory in order to ensure fairness and uniform treatment for all applicants in the simultaneous drawings. Thomas E. Lewis, 70 IBLA 69 (1983); Warren A. Haas, 66 IBLA 107 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

